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Dispossession of a Tenant Without Judicial Process

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Comments

DISPOSSESSION OF A TENANT WITHOUT JUDICIAL PROCESS

I. INTRODUCTION

The rights of a landlord and his tenant, when the landlord attempts eviction without judicial process, have yet to be conclusively determined in Pennsylvania. The basic fact situation assumed throughout this Comment is simple and commonplace: the tenant's right to possession of the leased premises has terminated[1] and the landlord undertakes to use self-help[2] to evict the tenant. The rights and duties of the parties in such a situation are unclear and may even be contradictory. This Comment will explore the landlord's statutory and common law rights to use self-help and examine the principal methods by which tenants have heretofore attempted redress. In conclusion, a new remedy

1. This Comment will not discuss what constitutes termination of the tenancy. In all cases it will be assumed that the tenant's right to possession has terminated. For a detailed discussion of termination of leaseholds, *see generally* 1 AMERICAN LAW OF PROPERTY §§ 3.88, 3.89, 3.94, 3.97 (A. Casner ed. 1952); G. THOMPSON, REAL PROPERTY §§ 1315-19, 1325-30, 1335-37, 1342-48, 1365-71, 1377-79 (1959 Replacement).

2. Self-help, of course, may take forms as varied as a verbal suggestion to vacate or an expulsion by physical violence. When referred to generally in the Comment, self-help shall mean any action except judicial process by which a landlord attempts to evict a tenant. Examples of the type of action contemplated include changing locks or otherwise barring the tenant's entry into the leased premises, removing the tenant's furniture from the premises, discontinuing electricity, gas, water, and other utilities serving the leased premises, ordering the tenant to vacate by threats of physical violence, or actually using physical force to expel the tenant.

for tenants who find themselves the object of a landlord's self-help will be discussed.

Basically, the determination of a landlord's right to use self-help is made by reference to whether a landlord can be held civilly or criminally liable for his act of entering upon the leased premises.[3] As most states deny any civil recovery on a common law action of trespass,[4] a tenant seeking redress must bring his action under a statute creating a cause of action for the landlord's entry.[5] Since Pennsylvania has no such statute and follows the majority rule, denying an action in trespass,[6] it has been said that a landlord has the right to use self-help in Pennsylvania.[7] This necessary inverse logic may explain the paucity of Pennsylvania cases on the subject and the confusion among lawyers. Criminal liability for a landlord's use of self-help is somewhat more settled in most jurisdictions, but, as will be discussed later, the issue is definitely not settled in Pennsylvania. This Comment will therefore avoid declaring that the right to self-help exists without an explanation of the source, the nature, and the limitations on that right.

Part II of this Comment will examine authorities in jurisdictions wherein it has been said that a landlord has a right to use self-help, with particular emphasis on the law of England and Pennsylvania. This view is held in what is probably the majority of American jurisdictions and will be discussed as the "prevailing doctrine." An annotation on this subject has discussed what it calls the "modern doctrine," whereby a landlord entitled to possession of leased premises must resort to judicial process to gain such possession or be liable in damages for his use of extra-judicial process.[8] This "modern doctrine" will be discussed in Part III. Injunctive relief for the tenant will be discussed in Part IV.

II. The Prevailing Doctrine

A. *The English Rule*

All American civil and criminal statutes regarding forcible entry and detainer can be traced to the statute of Richard II,[9] enacted in 1381. That statute, as quoted in a later case, provided:

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3. *See generally* Annot., 6 A.L.R.3d 177 (1966). This annotation thoroughly compiles the leading cases in each jurisdiction.

4. W. Prosser, Handbook on the Law of Torts, § 123 (4th ed. 1971).

5. For an example of such a statute, *see, e.g.*, Cal. Civ. Pro. Code § 1159 (West 1955), discussed at text accompanying notes 95-107 *infra*.

6. *See, e.g.*, Overdeer v. Lewis, 1 W. & S. 90, 37 Am. Dec. 440 (Pa. 1841), discussed at text accompanying notes 27-29 *infra*.

7. Annot. 6 A.L.R.3d 177, 183 (1966).

8. *Id.* at 179.

9. Statute of Forcible Entry, 5 Rich. 2, c.2 (1381).

> The king defendeth that none shall make entry on lands and tenements but in cases where entry is given by law; and in that case not with strong hand nor with multitude of people, but only in a peaceable and easy manner.[10]

This statute has been considered to be strictly criminal, creating no civil cause of action for damages.[11] Thus the present-day English rule, both as regards civil and criminal liability, is in agreement with the majority of American jurisdictions.[12]

This precedent in the English law was altered slightly in the second half of the nineteenth century. This alteration is of more than historical interest, as it may explain much of the reasoning found in Part III of this Comment. In 1840, Newton and his wife sued Harland and another in trespass, alleging that the defendants had acted tortiously in using force to expel the plaintiffs from land the plaintiffs had leased from the defendant.[13] The plaintiffs admitted that their tenancy had terminated, but they asserted that the defendant-landlord had no right to use force to evict them from the land. Chief Justice Tindal of the Court of Common Pleas began his discussion of the case by saying:

> This case involves a queston of great importance and one of very general application, namely, whether, after a tenancy has been determined . . . the landlord may enter on the premises whilst the tenant still remains personally in possession, and after requesting him to depart and give up the possession, and his refusing to do so, may turn him out . . . by force, using as much force . . . necessary for that purpose.[14]

In other words, the issue confronting the court was whether a landlord may use reasonable self-help to evict a tenant at the termination of a leasehold. The case was remanded for further findings by a jury on the reasonableness of the force used.[15] On remand, however, three of the four judges indicated that the landlord did not have the right to evict the tenants by force, whether reasonable or not. Chief Justice Tindal said, "I do not see how the defendants can justify the expulsion of the . . . plaintiff . . . by an act which . . . is criminal."[16] Justice Coltman, the dissenting member of the court, attempted to meet this argument by saying:

> the law will punish for the . . . entry; but . . . the tenant . . . being himself a wrongdoer, ought not to be heard to

10. Newton v. Harland, 133 Eng. Rep. 490, 496 (C.P. 1840).
11. *See, e.g.*, Taunton v. Costar, 101 Eng. Rep. 1060 (K.B. 1797).
12. *See* discussion at text accompanying notes 25-41 *infra*.
13. Newton v. Harland, 133 Eng. Rep. 490 (C.P. 1840).
14. *Id.* at 496.
15. *Id.*
16. *Id.*

> complain in a civil action for that which is the result of his own misconduct and injustice.[17]

The statement by Justice Tindal may be summarized as holding that in this case the landlord's actions give rise to a civil cause of action against him if acted criminally. On the other hand Justice Coltman contends that the plaintiff cannot recover because both the plaintiff and the defendant acted wrongly, if not criminally. This basic argument recurs throughout the cases involving self-help evictions and provides the essence of the controversy in these cases.

Actually, the reason for the decision in *Newton* may have been policy, as articulated by Justice Erskine when he said:

> I cannot but apprehend that, if it were once established at law that a landlord might, in all cases where his tenant holds over, enter by force upon the premises and expel the tenant . . . the peace of the country would be endangered by the frequent resort to their summary proceedings. . . .[18]

This concept was somewhat expanded in the later case of *Beddall v. Maitland,*[19] one of the few cases to follow *Newton,* wherein it was said:

> This statute [the statute of Richard II] creates one of the great differences which exist in our law between the being in possession and the being out of possession of land. . . . The effect of the statute is this, that when a man is in possession he may use force to keep out a trespasser; but if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance.[20]

This policy statement seems to be the crux of any argument denying a landlord's right to use self-help for eviction.

Newton v. Harland[21] and its progeny[22] were specifically overruled by a unanimous Court of Appeals in 1919 in *Hemmings v. Stoke Poges Golf Club, Ltd.*[23] When phrasing the issue in *Hemmings*, Lord Justice Scrutton said the case would decide

> whether, if an owner of landed property finds a trespasser on his premises, he may enter the premises and turn the trespasser out, using no more force than is necessary, . . . without having to pay damages for the force used.[24]

With such a phrasing of the issue, the answer "of course he may" was not unexpected. Furthermore, such a phrasing seems to avoid

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17. *Id.* at 498.
18. *Id.* at 499.
19. 17 Ch. D. 174 (1881).
20. *Id.* at 188 (Fry, J.).
21. 133 Eng. Rep. 490 (1840).
22. *See* Beddall v. Maitland, 17 Ch. D. 174 (1881); Edwick v. Hawkes 18 Ch. D. 199 (1881).
23. [1920] 1 K.B. 720 (1919).
24. *Id.* at 738.

the point made by Chief Justice Tindal some eighty years earlier, to wit, that the status of the plaintiff should not be considered an affirmative defense available to the defendant; rather, the defendant must justify his acts without resorting to an *ad hominem* plea. Most authorities have maintained that the status of a tenant holding over *does* justify reasonable self-help efforts by the landlord.[25] But it is submitted that the statement of the conclusion is not persuasive of its reasoning.

The state of the English law regarding self-help on the part of a landlord may be summarized as follows: A landlord is not subject to civil or criminal liability if his self-help tactics are peaceable; he cannot be civilly liable if he uses reasonable force to regain possession, although he may be held criminally liable; civil liability on the part of the landlord arises only if he uses more force than is necessary and reasonable to regain possession.

B. The Pennsylvania Rule

1. *Civil Liability*

The law in Pennsylvania regarding the civil liability of a landlord for his self-help actions has been stated as follows:

> It is the duty of the tenant to give up the possession at the end of the term. . . . The landlord may forcibly dispossess the tenant as soon as the lease expires if he refuses to leave . . . but he must use no more force than is necessary, and do no wanton damage.[26]

The cited authorities do not explain whether the landlord's right is derived from his immunity from civil liability, criminal liability, or both. However, the cases cited as supporting the rule indicate that the statements are based upon the non-liability of the landlord in a civil proceeding.

The leading Pennsylvania case denying civil damages is *Overdeer v. Lewis*.[27] In that case, the plaintiff brought an action against his landlord for damage done to plaintiff's personal prop-

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25. *See, e.g.*, 2 W. BLACKSTONE, COMMENTARIES *150; COKE ON LITTLETON § 57b; W. TRICKETT, LANDLORD AND TENANT 479, § 566 (1904).

26. W. TRICKETT, LANDLORD AND TENANT 543, § 633 (1904). *See* 22 PENNA. LAW ENCYC., *Landlord and Tenant* § 391 (1959) wherein it is stated: "This right to use reasonable self-help is not in any way impaired by the comprehensive Landlord and Tenant Act of 1951." *See also* Comment, *Analysis of Pennsylvania Landlord-Tenant Act of 1951*, 13 U. PITT. L. REV. 396, 414 (1956) wherein it is stated: "The landlord may also regain possession through self-help where the lease has expired. . . ."

27. 1 W. & S. 90, 37 Am. Dec. 440 (Pa. 1841).

erty while the landlord was removing it from the leased premises at the expiration of the plaintiff's term. The jury was charged that, as the plaintiff was a tenant at will and subject to removal at the defendant's pleasure, the landlord was liable only for damages caused by unnecessary violence on his part.[28] In other words, the trial court judge ruled that a landlord may use reasonable force to evict a tenant at will, and the jury was charged to determine the reasonableness of the landlord's actions in this case. Judgment was for the defendant and on appeal the Pennsylvania Supreme Court affirmed per curiam:

> [T]here could be no doubt that he was a tenant at will . . . and the landlord might forcibly dispossess him on the instant . . . with this limitation, only, that he should use no greater force than might be necessary. . . .[29]

Although Overdeer was seeking only to recover damages to his personal property, both the trial court and the supreme court addressed themselves to the issues of damages to plaintiff's personal property *and* damages for the entry itself. As a result, all litigants attempting recovery for the entry of a landlord must confront this precedent by dictum in *Overdeer*.

The plaintiff in *Kellam v. Janson*[30] sought damages for trespass from a purchaser of the land which he had leased and upon which the alleged trespass took place. No damages to any personalty were alleged, and the status of the plaintiff as a tenant at will was undisputed. The plaintiff obtained a judgment at the trial court, but the Pennsylvania Supreme Court reversed on the basis of *Overdeer v. Lewis*.[31] The importance of the *Kellam* decision is to be found in the court's statement that "an action is well-founded only when a right is invaded; but the plaintiff's right ceased by the entry of the defendant. . . ."[32] Such a statement seems to ignore the not-so-modern theory that liability is founded on a breach of a duty,[33] and not merely on an invasion of a right. To say that a person's rights are dependent upon an arbitrary decision by the very same person who owes the correlative duties seems actually to be saying that there are really no rights at all.[34]

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28. *Id.*
29. *Id.* at 91, 37 Am. Dec. at 440.
30. 17 Pa. 467 (1851).
31. 1 W. & S. 90, 37 Am. Dec. 440 (Pa. 1841). "The case is completely within the principle of Overdeer v. Lewis. . . ." Kellam v. Janson, 17 Pa. 467, 469 (1851).
32. 17 Pa. at 469.
33. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS 1-7, § 1 (4th ed. 1971).
34. *Cf.* W. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS 5-9, 65-114 (Cook ed. 1923). In fact, Hohfeld's Jural Correlatives seem to indicate that the tenant may have a "liability" if the landlord is said to have the "power" to enter, as the *Kellam* court seems to hold. So according to the real meaning of the court's decision the tenant in the situation discussed here never did have a right, and therefore never had a cause of action.

Once again the real question—the tenant's holdover status as barring the suit—was sidestepped.

There are very few recent Pennsylvania cases that deal with the civil liability of a landlord when he uses self-help methods. Furthermore, those cases that have been reported[35] do little more than follow the statements of the previous authority.[36] It is submitted that that authority might be re-examined in light of the criticism offered in this section and in those cases discussed in Part III.

In addition to a consideration of the case law concerning civil liability, a Pennsylvania landlord's "right" to use reasonable self-help must be examined in light of certain statements in the Landlord and Tenant Act of 1951.[37] No authorities could be found which held that the Landlord and Tenant Act of 1951 affected this right of the landlord in any way. However, there are certain ambiguous statements in the Act that could be used to support an argument denying the right of self-help by a landlord. For example, the title of the Act states that the Act relates to "the rights, obligations, and liabilities of landlord and tenant . . . *consolidating* the law relating thereto."[38] If, indeed, the legislature was attempting to consolidate Pennsylvania Landlord-Tenant law, it seems strange that in listing a landlord's remedies,[39] his very valuable right of self-help was negligently omitted. It is submitted that if the legislature had intended the landlord to use self-help, the legislature would have given him the statutory right to do so when all his other rights were being consolidated. This legislative omission becomes even more significant when it is noted that in Section 103 of the Act[40] the legislature carefully

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The court's conclusion may be stated in three different forms, but the reasoning is never supplied except in this circular fashion.

35. *See, e.g.*, Usnick v. Pittsburgh Terminal Coal Corporation, 305 Pa. 355, 156 A. 245 (1931); Leidy v. Proctor, 97 Pa. 486 (1881); Rich v. Keyser, 54 Pa. 86 (1867); Strawbridge & Clothier v. Stiffles, 100 Pa. Super. 285 (1930).

36. Overdeer v. Lewis, 1 W. & S. 90, 37 Am. Dec. 440 (Pa. 1841) is the major authority. *See also* authorities cited at notes 24-26 *supra*.

37. PA. STAT. ANN. tit. 68, § 250.101 et seq. (1951). *See* 22 PENNA. LAW ENCYC., *Landlord and Tenant* § 391 (1959) wherein it is stated: "This right to use reasonable self-help is not in any way impaired by the comprehensive Landlord and Tenant Act of 1951."

38. PA. STAT. ANN. tit. 68, § 250.101 (1951) (emphasis added).

39. *See, e.g.*, PA. STAT. ANN. tit. 68, §§ 250.301-313, 250.501-511 (1951). Many of these sections are not law today, due either to legislative enactment, judicial decisions, or judicial rule making power. The sections are cited merely to indicate that in 1951 the legislature was indeed attempting to consolidate the rights of landlords.

40. PA. STAT. ANN. tit. 68, § 250.103 (1951).

enumerated ten previously existing rights of landlords and tenants that were not to be affected by the Act; the landlord's right to use self-help in eviction is not among those listed. Of course these sections do not provide any definitive answer as to the legislature's intention, but it is submitted that they do raise some question as to whether the legislature may have attempted to abolish a landlord's right of self-help in 1951. The legislature's very last words in the Landlord and Tenant Act of 1951 may provide an answer to the question: "[T]his act shall furnish a complete and exclusive system in itself."[41] It is submitted that this sentence reflects the intent of the legislature to create a complete system for adjudicating landlord-tenant dispues which should be considered in ascertaining whether the landlord's right of self-help survived the enactment of the Landlord and Tenant Act.

2. *Criminal liability*

In Pennsylvania forcible entry[42] and forcible detainer[43] are crimes. Whether the actions of a landlord using self-help eviction methods come within the prohibitions of these statutes is an issue that has perplexed the courts to some degree.

The statements in an early case[44] heard before a Pennsylvania County Court seem to indicate that a landlord attempting to evict his tenant by self-help might have been subject to indictment for his acts. That court said:

> [W]hatever right . . . the man who makes the entry may have, . . . he commits a crime . . . if he enter with force on a person having no right. . . . [T]he person forcibly dispossessed . . . is taken under the protection of the law. . . .[45]

The facts in this case are not set out in the report, but it is submitted that this quoted language could support the conclusion that the owner of the land was being tried for forcible entry[46] upon that land. Of course, any prosecution for forcible entry must prove force, and this court gave a rather all-encompassing definition of force, saying:

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41. PA. STAT. ANN. tit. 68, § 250.602 (1951).

42. PA. STAT. ANN. tit. 18, § 4403 (1939) provides, *inter alia*:

> Whoever, with violence and a strong hand, or circumstances of terror, enters upon or into any lands or building, or after entering peaceably, turns out by force or by threats, or menacing conduct, the party in possession, is guilty of a forcible entry. . . .

43. PA. STAT. ANN. tit. 18, § 4404 (1939) provides, *inter alia*:

> Whoever, by force and with a strong hand, or by menaces or threats, unlawfully holds and keeps possession of any lands or tenements, whether the possession was obtained peaceably, or otherwise, is guilty of forcible detainer. . . .

44. Pennsylvania v. Robison, 1 Addis. 14 (Pa. C.P. 1791).

45. *Id.* at 15.

46. It is further submitted that the elements of forcible entry were the same in 1791 as at present. *Compare* the text of the statute of Richard II, quoted at text accompanying note 9 *supra* with the text of Pennsylvania's present statute, quoted at note 42 *supra*.

> [T]here must be at least such acts of violence or such threats, menaces, signs or gestures as may give ground to apprehend personal injury or danger in standing in defence of the possession.[47]

This definition, and the reasoning behind it, becomes more important when the several twentieth century cases are analyzed.[48]

The case of *Commonwealth v. Kensey*,[49] decided in 1846, presents a detailed discussion of the history of the law of forcible entry and explains the distinction between civil and criminal liability. In that case, the defendant was being prosecuted for forcibly expelling his tenant; the force consisted of five men carrying the female tenant out of the premises at the direction of the defendant.[50] Ruling on a motion for a new trial after defendant's conviction, the court took note of the many civil cases[51] cited as precedent for granting the landlord a right to use reasonable force to evict a tenant at will.[52] The court, however, recognized that these cases were civil and proposed the distinction stating:

> [T]hough the entry of [a landlord] be lawful . . . so that he cannot in any case be punished in an action at the common law, yet the lawfulness of his entry no way excuses the violence or lessens the injury done . . . and consequently an indictment of forcible entry . . . is good.[53]

In other words, this court, as have most others, is declaring that the liability of the defendant for his acts depends entirely on who is suing. The tenant cannot maintain the suit because he is a wrongdoer, even though he may have suffered damages; rather, the suit must be brought by the Commonwealth on behalf of the people for they have suffered a damage to the public peace *and* they have done no wrong. The landlord's liability is made to depend

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47. Pennsylvania v. Robison, 1 Addis. 14, 16 (Pa. C.P. 1791).

48. *See* text accompanying notes 56-82 *infra*.

49. 2 Par. Eq. Cas. 401 (Pa. 1846).

50. The court quoted the statute upon which the prosecution was based:

> Whoever shall violently or forcibly enter into the house or possession of any other person . . . shall be punished as a breaker of the peace.

The court said this statute was passed in the year 1700. Commonwealth v. Kensey, 2 Par. Eq. Cas. 401, 405 (Pa. 1846).

51. Pennsylvania v. Robison, 1 Addis. 14 (Pa. C.P. 1791), discussed at text accompanying notes 44-48 *supra*, was not cited in this case.

52. Overdeer v. Lewis, 1 W. & S. 90, 37 Am. Dec. 440 (Pa. 1841) and Newton v. Harland, 133 Eng. Rep. 490 (C.P. 1840) were the major authorities presented. *Newton v. Harland* was, of course, the law in England at that time, but the court in the instant case, probably recognizing its doubtful validity, referred mainly to the dissenting opinion in *Newton*.

53. Commonwealth v. Kensey, 2 Par. Eq. Cas. 401, 409 (Pa. 1846).

absolutely on the status of the person initiating the action against him. The defendant-landlord in *Commonwealth v. Kensey*[54] was held criminally liable for forcible self-help tactics, the court stating that Pennsylvania law was thereby brought into conformity with the law of England.[55] Interestingly, the *Kensey* court did not discuss what degree of force was required to be proven to come within the statutory prohibition. The court simply held that the defendant's acts in this case were of such degree.

In 1914, in the case of *Commonwealth v. Everheart*,[56] the Pennsylvania Superior Court was forced to resolve the issue of the type of force prohibited by the statute.[57] Citing the opinion in the trial court[58] as the opinion of the Superior Court, it was held that:

> [T]here need not be actual terrorization of the occupants of a dwelling house to constitute the offense. . . . [There need be only] force sufficient to alarm, so as to cause surrender of possession, or to provoke a breach of the peace [citation omitted].[59]

Such a definition would seem to include almost any act of self-help a landlord could attempt.

Commonwealth v. Everheart[60] is a valuable case in the study of a landlord's civil and criminal liability for his self-help methods. The opinion deals extensively with the reasons for the passage of the original forcible entry statute in 1381,[61] and it traces the development of the distinction between civil and criminal liability, both in England and in Pennsylvania. The case arose after Yohn, the prosecuting witness, was discharged from his employment with the defendant about January 1, 1913. As an incident of his employment, Yohn had been given a house to live in, and at the time he was discharged, he was also notified to vacate the house. De-

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54. 2 Par. Eq. Cas. 401 (Pa. 1846).

55. "[W]e place [the rule] upon the ground where the English judges have . . . to both civil and criminal cases. . . ." Commonwealth v. Kensey, 2 Par. Eq. Cas. 401, 408 (Pa. 1846). As discussed in note 52 *supra*, this statement by the court acknowledges that Newton v. Harland, 133 Eng. Rep. 490 (C.P. 1840) was probably not an accurate statement of the English law.

56. 57 Pa. Super. 192 (1914).

57. The forcible entry statute in effect in 1914 provided, *inter alia*:

> If any person shall with violence and a strong hand enter upon or into any lands or buildings . . . by any kind of violence, or other circumstances of terror, or if any person after entering peaceably, shall turn out by force or threats, or menacing conduct, the party in possession, every person so offending shall be guilty of a forcible entry. . . .

Act of 1860, March 31, P.L. 382, § 21 (1860). Compare the "modern" statute quoted in note 42 *supra* and the 1381 statute quoted at text accompanying note 10 *supra*.

58. This opinion was written by Judge Seibert, President Judge of the Court of Quarter Sessions of Perry County.

59. Commonwealth v. Everheart, 57 Pa. Super. 192, 206 (1914).

60. 57 Pa. Super. 192 (1914).

61. *Id.* at 198-99.

spite repeated demands by the defendant to vacate, Yohn and his family were still in the house on July 1, 1913. On that day, the defendant and others broke in a window of the house and removed all of Yohn's furniture. Yohn's wife and children were in the house the entire time, but "no violence was done or offered to be done . . ."[62] to any of the family. The court said that "In an indictment for a forcible entry, neither [title nor the right of possession] comes into question, but the possession only and the force."[63] After defining the requisite amount of force,[64] the court said:

> To hold that the facts established by undisputed testimony in this case amounted to no more than a trespass, would be to disregard the plain language of the act, do violence to its spirit and destroy its remedial purpose.[65]

The defendant-landlord was consequently convicted of the crime of forcible entry.

The Superior Court appeared to forget *Everheart*, however, in its decision of *Commonwealth v. Leibowitz*.[66] In that case, the tenant admitted that his right to possession had expired and testified that the landlord-defendant "chased me out of the store"[67] saying "you better get out of here."[68] The landlord then gained access to the premises by hiring a locksmith to pick the lock. The landlord was convicted of forcible entry at trial, and the Superior Court reversed, ruling that "there was an absence of violence . . . or other circumstances to cause terror necessary to bring the defendant's conduct within the statute."[69] It is submitted that *Everheart* and *Leibowitz* cannot be distinguished. In *Everheart*, where a landlord's conviction of forcible entry was sustained, the court carefully pointed out that "no violence was done or offered to be done . . ." to anyone;[70] in *Leibowitz*, however, the conviction was reversed, even though the landlord explicitly threatened to use violence.[71] Furthermore, the facts recited by the *Leibowitz* court seem to fall into that court's definition of violence: "such conduct as is calculated to alarm the most timid."[72] It is submitted that a

62. *Id.* at 195.
63. *Id.* at 203, citing Pennsylvania v. Robison, 1 Addis. 14 (1791).
64. *See* text accompanying note 59 *supra.*
65. Commonwealth v. Everheart, 57 Pa. Super. 192, 207 (1914).
66. 103 Pa. Super. 479, 157 A. 219 (1931).
67. *Id.* at 480, 157 A. at 220.
68. *Id.*
69. *Id.*
70. Commonwealth v. Everheart, 57 Pa. Super. 192, 195 (1914). *See* text accompanying note 62 *supra.*
71. *See* text accompanying notes 67-68 *supra.*
72. Commonwealth v. Leibowitz, 103 Pa. Super. 479, 480, 157 A. 219, 220 (1931).

finding that a person was chased from a place[73] is inconsistent with a finding that he was not alarmed. It is submitted, therefore, that *Commonwealth v. Leibowitz*[74] is of doubtful validity.[75]

In *Commonwealth v. Bauer*,[76] the Erie county court attempted to distinguish *Commonwealth v. Everheart*[77] and *Commonwealth v. Leibowitz*.[78] Both counsel in *Bauer* indicated that they thought *Everheart* and *Leibowitz* inconsistent,[79] but the court held there was no inconsistency. In distinguishing the two, the court relied on the presence of the tenant's wife as justifying conviction in *Everheart* and the absence of anyone in *Leibowitz* as justifying reversal of conviction.[80] Such reasoning not only ignores the statement of the *Everheart* court that the tenant's wife was never threatened by or in fear of any violence,[81] it also ignores the reason why the tenant was absent in *Leibowitz*—he had been chased away by the threats of the defendant.[82] It is submitted that the distinction made by the court in *Bauer* is one without a difference.

In light of the foregoing, and other reported decisions,[83] it is submitted that a landlord in Pennsylvania commits a crime if he forcibly enters upon any real estate even though he may have a right to possession of that real estate. The definition of force as "such conduct as is calculated to alarm the most timid"[84] or "sufficient to alarm"[85] or "calculated to prevent resistance"[86] seems to be settled. The force necessary to sustain a conviction seems to be slight indeed, and the definitions appear to encompass most self-help tactics commonly used by landlords. Several courts, however, seem to have decided that the force must be of a higher degree than

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73. *See* text accompanying notes 67-68 *supra*.
74. 103 Pa. Super. 479, 157 A. 219 (1931).
75. It may be argued that the *Leibowitz* court was concerned with violence to the property in question, rather than violence to the person. Only such an argument can be used to distinguish *Leibowitz* from *Everheart;* in the latter a window was broken, whereas in the former the lock was picked open. However, the *Leibowitz* court, as have all other courts considering criminal liability for forcible entry, indicated that violence to the person is the essence of the crime by defining violence as "such conduct as is calculated to alarm the most timid." Commonwealth v. Leibowitz, 130 Pa. Super. 478, 480, 157 A. 219, 220 (1931).
76. 65 Pa. D. & C. 281 (Pa. C.P. 1948).
77. 57 Pa. Super. 192 (1914).
78. 103 Pa. Super. 479, 157 A. 219 (1931).
79. Commonwealth v. Bauer, 65 Pa. D. & C. 281, 283 (Pa. C.P. 1948).
80. *Id.*
81. Commonwealth v. Everheart, 57 Pa. Super. 192, 195 (1914). *See* text accompanying note 62 *supra*.
82. Commonwealth v. Leibowitz, 103 Pa. Super. 479, 480, 157 A. 219, 220 (1931). *See* text accompanying notes 67-68 *supra*.
83. *See, e.g.,* Commonwealth v. Sacarakis, 196 Pa. Super. 455, 175 A.2d 127 (1961); Commonwealth v. Tillia, 73 Pa. Super. 376 (1920); Commonwealth v. Shaffer, 32 Pa. Super. 375 (1907).
84. Commonwealth v. Leibowitz, 130 Pa. Super. 478, 480, 157 A. 219, 220 (1931).
85. Commonwealth v. Everheart, 57 Pa. Super. 192, 206 (1914).
86. Pennsylvania v. Robison, 1 Addis. 14, 16 (Pa. C.P. 1791).

specified in these definitions before a conviction can be sustained.[87] These conflicts in the case law prevent any realistic statement of the extent of a landlord's criminal liability for his self-help methods.

III. The Modern Doctrine

An annotation on the subject of a landlord's self-help remedies has said that many jurisdictions adhere to the rule that

> a landlord otherwise entitled to possession must, on the refusal of the tenant to surrender the leased premises, resort to the remedy given by law to secure it; otherwise he would be liable in damages for using force or deception to regain possession.[88]

That annotation presents a complete list of the jurisdictions following this rule; the rationale of several of those leading cases will be discussed herein.

California is perhaps the leading jurisdiction which subjects a landlord to civil liability if he resorts to self-help eviction methods. The case of *Jordan v. Talbot*[89] is most often cited for this proposition, but civil liability of the landlord was established in California well before this case was decided. As early as 1859 no less a person than the Governor of the State was determined to be civilly liable for the self-help methods used by him in gaining possession of land to which he admittedly had the right of possession.[90] The court said:

> Questions of title or right of possession cannot arise; a forcible entry upon the actual possession of plaintiff being proven, he would be entitled to restitution, though the fee simple, title, and present right of possession, are shown to be in the defendant.[91]

The court further said "The authorities on this point are numerous and uniform,"[92] although none are cited.

The civil action of the plaintiff in *McCauley v. Weller*[93] was probably based on a criminal statute.[94] The court didn't discuss

87. *See* Commonwealth v. Leibowitz, 103 Pa. Super. 479, 157 A. 219 (1931); Commonwealth v. Bauer, 65 Pa. D. & C. 281 (Pa. C.P. 1948).
88. Annot., 6 A.L.R.3d 177, 186 (1966).
89. 55 Cal. 2d 597, 12 Cal. Rptr. 488, 361 P.2d 20 (1961).
90. McCauley v. Weller, 12 Cal. 500 (1859).
91. *Id.* at 525.
92. *Id.*
93. *Id.*
94. The only mention of any statute in the report of the case appears in the argument of the counsel for appellee-plaintiff. He quotes the statute as saying:
No person or persons shall hereafter make any entry into lands,

whether the action can be maintained as a common-law action of trespass, ignoring the historical distinction between civil and criminal liability as previously discussed.[95] This problem was eliminated in California in 1872, however, when the legislature enacted a statute creating a civil cause of action for forcible entry.[96]

There is a great deal of authority in California for the proposition articulated in *McCauley*,[97] but the leading case is *Jordan v. Talbot*.[98] Justice Traynor, writing for the majority in *Jordan*, in essence ruled that Section 1159 of the Code of Civil Procedure which creates a civil cause of action for forcible entry[99] should be construed to include entries made by landlords after a leasehold on their property has terminated. This holding is based on the fact that a right of re-entry is not expressly made an affirmative defense to an action on the statute, and such a defense cannot be implied from the history, purpose, and background of the statute.[100] In other words, since a landlord is neither expressly nor impliedly excluded under the statute, he must be included as being liable.

The landlord in *Jordan v. Talbot* entered the premises in the tenant's absence by means of a pass-key. He removed all of the tenant's furniture to a warehouse, and when the tenant returned, she was prevented from entering the premises.[101] The court ruled that such actions violated both sections of the statute;[102] the use of force is implied in an entry made upon land in the possession of an-

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tenements, or other possessions, but in cases where entry is given by law, and in such cases, not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person henceforth do the contrary, and thereof be duly convicted, he shall be punished by fine.

McCauley v. Weller, 12 Cal. 500, 522 (1859).

95. It is interesting, if not significant, to note that the historic English case allowing civil recovery in an action of trespass for a landlord's forcible entry was the law of England at the time the California case was decided. *See* Newton v. Harland, 133 Eng. Rep. 490 (C.P. 1840), overruled by Hemmings v. Stoke Poges Golf Club, Ltd., [1920] 1 K.B. 720 (1919). However the English cases are not cited in the decision of the California Supreme Court.

96. CAL. CIV. PRO. CODE § 1159 (West 1955).

97. *See, e.g.*, Karp v. Margolis, 159 Cal. App. 2d 69, 323 P.2d 557 (1958); Eichhorn v. De La Cantera, 117 Cal. App. 2d 50, 255 P.2d 70 (1953); Pickens v. Johnson, 107 Cal. App. 2d 778, 238 P.2d 40 (1952); Gilbert v. Peck, 162 Cal. 54, 121 P. 315 (1912); Kerr v. O'Keefe, 138 Cal. 415, 71 P. 447 (1903); Baker v. Dickson, 62 Cal. 19 (1882); Henderson v. Grewell, 8 Cal. 581 (1851).

98. 55 Cal. 2d 597, 12 Cal. Rptr. 488, 361 P.2d 20 (1961).

99. CAL. CIV. PRO. CODE § 1159 (West 1955) provides:

FORCIBLE ENTRY DEFINED. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

100. Jordan v. Talbot, 55 Cal. 2d 597, 603, 12 Cal. Rptr. 488, 491, 361 P.2d 20, 23 (1961).

101. *Id.* at 598, 12 Cal. Rptr. at 490, 361 P.2d at 22.

102. CAL. CIV. PRO. CODE § 1159 (West 1955).

other if such entry is in his absence and without his consent, and furthermore, the plaintiff was prohibited from entering the premises after the landlord took possession, thus violating section two of the statute.[103] In other words, the landlord's actions in entering the premises were forcible, thus violating section one,[104] and by turning out the tenant by force after his entrance, the landlord violated section two.[105]

Four justices concurred in Justice Traynor's opinion in *Jordan v. Talbot*, and three justices joined in Justice Schauer's dissent. The majority opinion, in ruling that title or right to possession is not relevant in a forcible entry action, necessarily ruled that the plaintiff's status was likewise irrelevant. In fact, the decision is significant for its lack of any discussion attempting to justify the plaintiff's actions before commencement of the suit.[106] Although the dissent attacked the holding of the court on two bases, neither one directly discussed the tenant as any type of wrongdoer. Primarily, the dissent argued that the majority was impairing the obligations of contract:

> Tenants and property owners may agree that the latter shall have some rights . . . and where such rights can be exercised peaceably, it seems to me only common and elementary justice that the courts uphold them.[107]

The dissent also cited several cases from California and other jurisdictions as supporting the rule that a landlord may use reasonable self-help methods without incurring civil liability.[108]

It is submitted that the basic reason for the decision in *Jordan v. Talbot* was the California statute which allows a lessor to obtain possession of any real property within just three days.[109] As Justice Traynor said, "This remedy is a complete answer to any claim that self-help is necessary."[110] Many of the cases in other

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103. *Id.*

104. Jordan v. Talbot, 55 Cal. 2d 597, 606-7, 12 Cal. Rptr. 488, 492-3, 361 P.2d 20, 24-5 (1961).

105. *Id.* at 609, 12 Cal. Rptr. at 494, 361 P.2d at 26.

106. It appears from the facts that the plaintiff was at least two months in arrears in rent payments and that one personal check for the rent had been dishonored by the bank.

107. Jordan v. Talbot, 55 Cal. 2d 597, 619, 12 Cal. Rptr. 488, 499, 361 P.2d 20, 31 (1969) (dissenting opinion). There was a provision in the lease that the landlord should have the right to take possession upon violation of the terms of the lease. 55 Cal. 2d 597, 612, 12 Cal. Rptr. 488, 496-7, 361 P.2d 20, 28-9 (1961).

108. *Id.* at 615, 12 Cal. Rptr. at 497-8, 361 P.2d at 29-30 (dissenting opinion).

109. CAL. CIV. PRO. CODE § 1161 (West 1955).

110. Jordan v. Talbot, 55 Cal. 2d 597, 605, 12 Cal. Rptr. 488, 492, 361 P.2d 20, 24 (1961).

jurisdictions rely on the landlord's speedy and efficient legal remedy for regaining possession as justification for granting a tenant a civil cause of action for a landlord's extra-judicial efforts.[111] It is submitted that the availability of such a remedy for a landlord in Pennsylvania may justify enjoining the landlord from using self-help eviction methods.

IV. Injunctive Relief for the Tenant

The Pennsylvania Landlord and Tenant Act of 1951[112] created a procedure whereby a landlord could recover possession of any premises held by a tenant after the expiration of the tenancy.[113] This procedure could be utilized to return possession to the landlord within a minimum of twenty-five days and a maximum of forty days.[114] These sections of the Landlord and Tenant Act have been greatly changed in the past year by the Minor Court Civil Procedural Rules Committee of the Pennsylvania Supreme Court.[115] Because of these changes, a landlord may now have to wait from thirty-five to fifty days to regain possession.[116] This section of the Comment will assume that the thesis outlined in Part III is the better reasoned approach to the issue of self-help by the landlord. It is submitted that since the legislature has provided a remedy for a landlord to regain the possession of leased premises, the landlord may not use extra-judicial methods. Proceeding from such an assumption, this section will propose that a tenant should be permitted to enjoin self-help eviction methods attempted by his landlord.[117]

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111. *See, e.g.*, Larkin v. Avery, 23 Conn. 304 (1854) (". . . a possession, commenced under a tenancy, cannot be put an end to in fact, by forcibly removing the tenant without process."); Adelheim v. Dougherty, 129 Fla. 680, 176 So. 775 (1937) ("The law provides an adequate and speedy remedy for the acquisition of possession of premises which are wrongfully held by another. . . ."); Farwell v. Warren, 51 Ill. 467 (1869) ("The law has given him an action of ejectment or a forcible entry and detainer. The law, for wise and salutary purposes, has always prevented a party, with violence or force, from adjusting his imaginary or even real wrongs."). *See* W. Barnett, *When the Landlord Resorts to Self-Help*, 19 Fla. L.R. 238 (1966) for a complete analysis of the law in Florida on this point.

112. Pa. Stat. Ann. tit. 68, § 250.101 et seq. (1951).

113. Pa. Stat. Ann. tit. 68, § 250.501-511 (1951).

114. Actually possession may possibly have been regained in ten days if the lease provided that the tenant waived his statutory right to have notice to vacate.

115. *See* Rules of Conduct, Office Standards and Procedure for Justices of the Peace, Rules 501-582 (1971). These rule changes are explained in Caldwell & Ackroyd, *Recent Changes in Practice Before Justices Of The Peace*, 43 Penna. B.A.Q. 39 (1971).

116. These figures assume that the tenant is able to take advantage of the many time periods specified. It's possible that the landlord evicting by judicial process may regain possession within seven days.

117. Several cases have discussed the propriety of an injunction *preventing* an eviction action from being maintained before a magistrate because of fraud, because an intricate legal question is involved, or because

In *Berman v. City of Philadelphia*,[118] the Pennsylvania Supreme Court enjoined the Philadelphia Police Force from using a type of self-help eviction method. The police apparently thought the appellants businesses were violating a zoning ordinance, so, at the direction of the Deputy Commissioner of Police, city employees cut all telephone and electricity lines leading into the building and changed the locks. A policeman was then stationed in front of the building with instructions to refuse to allow the appellants to enter. The day before this "eviction," the appellants had been denied a preliminary ex parte injunction restraining the city from taking such action. Over a week later, after a hearing on the matter, the Court of Common Pleas of Philadelphia County refused to grant a preliminary injunction restraining the city from dispossession in such a matter, apparently because the actions were a *fait accompli*.[119] The appellants immediately appealed this decision to the Pennsylvania Supreme Court, asking the Supreme Court to grant an immediate preliminary injunction, restraining dispossession by the city until the court could decide whether the trial court had erred. In other words, the appellants requested restoration of the status quo before the "eviction," pending the final disposition of the case. The Supreme Court refused to grant this immediate injunction, but three members dissented, filing an unreported opinion.[120] In the court's decision of the case on its merits, the appellants' petition to the Supreme Court for an immediate injunction pending review by that court was characterized as dangerous and unknown.[121] Only a bare majority of the court felt such an aversion to issuing an immediate injunction pending review, however, so that such a petition may prove successful in some situations. In other words, three members of the Pennsylvania Supreme Court have indicated that the Court may issue what is, in essence, a temporary restraining order.

The Supreme Court of Pennsylvania issued its final opinion in *Berman* four months after the police had dispossessed the appellants.[122] The Court reversed the trial court's refusal to grant the

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title to the land is at issue. *See, e.g.*, Romano *ex rel.* Romano v. Loeb, 326 Pa. 272, 192 A. 100 (1937); O'Neill v. McDermott, 40 Luz. Leg. Reg. 38 (Pa. C.P. 1948); Howey v. Stolarik, 40 Luz. Leg. Reg. 40 (Pa. C.P. 1940); Johnson v. Seitzinger, 40 Schuyl. Leg. Reg. 359 (Pa. C.P. 1937). On the contrary, this section will propose an injunction *forcing* a landlord to maintain his action before a magistrate.

118. 425 Pa. 13, 228 A.2d 189 (1967).
119. *Id.* at 14, 228 A.2d at 190.
120. *Id.* at 15, 228 A.2d at 191.
121. *Id.* at 20, 228 A.2d at 194.
122. *Id.* at 15, 228 A.2d at 191.

injunction and thereby enjoined the Philadelphia Police Department from interfering with appellants' rights until such rights were "determined in a manner consistent with an orderly administration of justice."[123]

The appellant in *Berman* was confronted with the burden of establishing that the lower court had committed an abuse of discretion and not merely an error.[124] In its per curiam opinion, the Supreme Court said:

> [T]he failure of the court below to insist that the police resort to the available legal machinery rather than forcibly evicting appellants, thereby insuring the dignity of the legal process, did amount to an abuse of discretion.[125]

The discretion of the trial court is exercised when it determines whether the plaintiff has proved the elements of his right to a preliminary injunction:

1. the rights of the plaintiff are clear;
2. there is an urgent necessity to avoid injury for which no compensation can be made; and
3. refusal of the injunction will result in greater injjry than granting it would.[126]

Since the trial court has a wide degree of discretion in determining whether the facts sustain a finding of all of the above elements,

> on an appeal from a decree which refuses, grants or continues a preliminary injunction, [the court] will look only to see if there were any apparently reasonable grounds for the action . . . and will not further consider the merits of the case.[127]

Obviously, the *Berman* court, after reviewing the evidence, felt that there were no reasonable grounds for the trial court's decision, and that on the contrary, the plaintiff had established the three elements necessary to secure an injunction.

The plaintiffs in *Berman* had first attempted to secure an ex parte injunction. Such an injunction, granted without a hearing on motion of the plaintiff, is provided for in Rule 1531 of the Pennsylvania Rules of Civil Procedure:

> (a) A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or

123. *Id.* at 17, 228 A.2d at 192.
124. *See* Rubin v. Bailey, 398 Pa. 271, 157 A.2d 882 (1960).
125. Berman v. City of Philadelphia, 425 Pa. 13, 15, 228 A.2d 189, 191 (1967).
126. These guidelines were established and discussed in Schwab v. Pottstown Borough, 407 Pa. 531, 180 A.2d 921 (1962) (injunction refused as plaintiff's injuries could be redressed).
127. Lindenfelser v. Lindelfelser, 385 Pa. 342, 343-44, 123 A.2d 626, 627 (1956).

> without notice. In determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits . . . or any other proof. . . .
> (b) . . . [A] preliminary or special injunction shall be granted only if
>
> (1) the plaintiff files a bond . . .
>
> (c) . . .
>
> (d) An injunction granted without notice to the defendant shall be deemed dissolved unless a hearing on the continuance of the injunction is held within five (5) days of the granting of the injunction. . . .[128]

The key words in this Rule are "immediate and irreparable injury," as indicated by the Pennsylvania Supreme Court when it said:

> The awarding of a preliminary injunction without notice is somewhat like judgment and execution before trial, for temporarily the defendant is *damnatus inauditus*. It is to be resorted to only from a pressing necessity to avoid injurious consequences that cannot be repaired under any standard of compensation. It ought never to be granted except in a clear case of an invaded right, to prevent irreparable mischief. . . .[129]

When ruling on a motion for an ex parte injunction the trial judge by necessity has almost unlimited discretion. A hearing on a petition for a preliminary injunction can be scheduled before an appellate court could review the correctness of the decision regarding the preliminary ex parte injunction. For that reason there are many appellate court opinions discussing preliminary injunctions but there are almost none discussing preliminary ex parte injunctions. However, appellate decisions have established the rule that a court may grant an injunction preserving the status quo pending a final hearing on the matter,[130] and appellate decisions have defined to an extent the immediate and irreparable injury requisite for a preliminary ex parte injunction. Thus, trial court judges do have definite guidelines to use in applying Rule 1531.[131]

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128. PA. R. CIV. P. 1531. The type of injunction contemplated here is frequently referred to as a "temporary restraining order." *Cf.* FED. R. CIV. P. 65(b).

129. Kittaning Brewing Co. v. American Natural Gas Co., 224 Pa. 129, 130, 73 A. 174, 175 (1909) (dictum). *See also* Commonwealth v. Guild Theatre Inc., 432 Pa. 378, 248 A.2d 45 (1968).

130. *See, e.g.*, Black Lick Manufacturing Co. v. Saltsburg Gas Co., 139 Pa. 448 (1891); Pennsylvania Pub. Util. Comm'n v. Israel, 356 Pa. 400, 52 A.2d 317 (1947) and authorities cited therein; Taylor v. Sauer, 40 Pa. Super. 229 (1909).

131. PA. R. CIV. P. 1531.

In light of the decision in *Berman v. City of Philadelphia*,[132] it is submitted that a preliminary ex parte injunction is an appropriate remedy for a tenant who is threatened by a landlord's self-help tactics. Although the person sought to be restrained in *Berman* was the city rather than a landlord, the actions did involve a type of eviction.[133] Although police action was enjoined in reliance on due process requirements, it is submitted that governmental action would be justified in such a situation before action by a private party. This is especially true in light of the definition the courts have developed for forcible entry. In other words, the use of forcible self-help by the police, although it may violate due process, is certainly preferable to the use of forcible self-help by private landlords both in terms of the interest to be protected and type of resistance likely to be provoked. Although due process was used in *Berman* to restrain the police, it is submitted that the policy of preventing disturbances of the peace is an equally strong argument for restraining the private landlord. Thus, although *Berman* may be factually distinguished from any case wherein the self-help methods of a landlord are sought to be enjoined, it is submitted that the principle of law articulated in *Berman* is applicable to both situations: a person in possession of property should not be dispossessed until his rights are "determined in a manner consistent with an orderly administration of justice."[134]

A preliminary ex parte injunction restraining a landlord from using self-help must meet the requisites of all such injunctions. Before such an injunction is granted it must be established that

1. the plaintiff's rights are clear;
2. there is an urgent necessity to avoid injury for which no compensation can be made; and
3. refusal of the injunction will result in greater injury than granting it would.[135]

The first element is unclear;[136] the *Berman* court said specifically that it was not concerned with the zoning controversy underlying the police action.[137] It may be argued therefore that this first req-

132. 425 Pa. 13, 228 A.2d 189 (1967). *See* discussion at text accompanying notes 115-124 *supra*.

133. The Pennsylvania Supreme Court ordered the appellees to "resort to the available legal machinery rather than forcibly evicting appellants." Berman v. City of Philadelphia, 425 Pa. 13, 15, 228 A.2d 189, 191 (1967).

134. *Id.* at 17, 228 A.2d at 192. The Court asked rhetorically: "Are we to say that because the police have the ability to act faster than the courts, the courts are powerless to act?" *Id.*

135. Schwab v. Pottstown Borough, 407 Pa. 531, 180 A.2d 921 (1962).

136. In an analysis of this element, Judge Bowman of the Commonwealth Court has said: "It would appear that this pronouncement is little more than an expression of caution that courts should exercise this equitable power with restraint." Commonwealth of Pennsylvania v. Barnes & Tucker Company, 1 Com. Ct. 552 (Pa. 1971).

137. Berman v. City of Philadelphia 425 Pa. 13, 15, 228 A.2d 189, 191 (1967).

uisite merely refers to the plaintiff's righs regarding the second and third requisites. However, in the alternative, it is submitted that previous discussion has shown that a tenant has a clear right to have his landlord evict him by judicial process only.[138] The second element of the action is probably the most important; it is simply a restatement of the traditional equity rule of "no adequate remedy at law." As long as Pennsylvania subscribes to the rule that a landlord cannot be held civilly liable for his self-help eviction methods, any tenant dispossessed without judicial process cannot be compensated for any injuries suffered because of the dispossession, and therefore has no adequate remedy save the injunction. As regards the third element, it is submitted that a tenant suddenly faced with eviction, having no place to live, will suffer much greater damage than a landlord forced to use judicial process to redress his grievances.

In light of the foregoing discussion it is submitted that a tenant threatened with dispossession should be afforded the remedy of a preliminary ex parte injunction immediately restraining the landlord from resorting to such action and forcing him to seek his statutory remedy. Although Pennsylvania authority supporting such a rule is scarce if not non-existent,[139] the granting of such an injunction by the courts can be easily accomplished within the existing and the traditional doctrines of equity practice.

V. Conclusion

A Pennsylvania tenant faced with the prospect of dispossession without judicial process has no legal remedy. It may be possible for him to initiate criminal proceedings to subject his landlord to criminal liability for forcible entry, but such a proceeding would not compensate the tenant in any way and should not be encouraged if the motive is merely revenge. At any rate, the paucity of appellate decisions indicates that criminal proceedings against the landlord rarely result in conviction. A tenant cannot recover in a civil proceeding if the landlord acted reasonably, although Pennsylvania may someday join the growing number of jurisdictions permitting such recovery. Finally, the right of a tenant to enjoin the self-help actions of his landlord has yet to be recognized.

138. *See* text accompanying notes 85-109 and notes 129-131 *supra*.

139. No reported cases have been found. However, within the knowledge of this author, two Courts of Common Pleas have granted such relief to a tenant. *See* Morrison v. Berney, No. 2838 May Term 1970 (Bucks County); Rickrode v. Nelson, No. 2 Jan. Term 1971 (Cumberland County).

This Comment has attempted to present arguments to counter the great weight of Pennsylvania authority denying a remedy to a tenant who has been dispossessed without judicial process. As indicated in the preceding paragraph, criminal remedies are not favored. However, it is submitted that a landlord who ignores his legal remedies should be held civilly liable for his actions in the same manner as determined in those cases discussed in Part III of this Comment. The tenant's possible status as a wrongdoer should not completely bar his recovery from a person who has done legal injury to him, especially since the landlord may use the legal process to redress any grievances resulting from his tenant's actions.

The availability of legal process to the landlord provides the basis for issuing an injunction forcing him to use such process. It is submitted that an order restraining a person from personally redressing his grievances and instead causing him to use judicial process for such redress is neither novel nor unreasonable. Rather, it allows courts to function in their historic role.

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